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damage incurred before conveyance. *Pegram v. N. Y. El. R. R. Co.*, 147 N. Y. 135.

EMINENT DOMAIN — COMPENSATION — VALUATION OF SPECIAL ADAPTABILITY OF LAND TAKEN. — A water board having obtained statutory powers for the construction of a reservoir, determined to take the claimant's land, which was especially adapted for reservoir purposes. The land could not have been so used by other possible competitors without their first obtaining parliamentary powers. *Held*, that the special adaptability may be considered as an element of value, but it is the contingent value due to the possibility of the land's coming into the market that is considered and not the value of the realized possibility, due to the fact that the promoters have obtained statutory powers. *In re Lucas & Chesterfield Gas and Water Board*, [1909] 1 K. B. 16.

The market value is the proper test of compensation for land taken by eminent domain. *City of Santa Ana v. Harlin*, 99 Cal. 538. Everything which gives the land intrinsic value should be taken into consideration. *Shenango & Allegheny R. R. Co. v. Braham*, 79 Pa. St. 447. So a special adaptability to any particular purpose is relevant provided there is a contingent possibility that the property will be put to that use. *Boom Co. v. Patterson*, 98 U. S. 403. It is always a question, however, whether this contingent possibility in fact exists. The court seems right in holding that its existence is not prevented by the need of further statutory powers. But when the special value exists only for the particular purchaser who has the compulsory powers, it is not to be considered. See *In re Countess Ossalinsky & Manchester Corporation*, Q. B. D. 1883; BROWN AND ALLAN, LAW OF COMPENSATION, 2 ed., § 659. To consider it then would be to test the compensation by the value to the buyer — the realized possibility. On the other hand, where the special value exists also for other possible purchasers, so that there is a real though limited market, then, even though there are at the moment no competitors, there is a real contingent possibility, which is universally considered an element of value. *In re Gough & Aspatia, etc., Water Board*, [1904] 1 K. B. 417.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ENJOINING STATE COMMISSION FROM ENFORCING RAILROAD RATES. — A state commission was established with power to fix and enforce railroad rates, subject to review on appeal to the highest state court. Without appealing thereto, the plaintiff railroad sued the commission in the federal court to restrain the enforcement of a rate alleged to be confiscatory. *Held*, that the bill should be retained to await the result of an appeal to the highest state court. *Prentiss v. Atlantic Coast Line Co.*, U. S. Sup. Ct., Nov. 30, 1908. See NOTES, p. 368.

FEDERAL COURTS — RELATIONS OF STATE AND FEDERAL COURTS — POWER OF COURT OF BANKRUPTCY TO RETAIN POSSESSION OF BANKRUPT'S PROPERTY. — A bankrupt corporation had in its possession show-cases purchased from the defendant in error, the price for which had not been paid. On the bankruptcy of the company, the court appointed the plaintiff in error receiver of the bankrupt's property and he took possession of all the property including the show-cases. The defendant in error, claiming that the title to the show-cases had never passed to the bankrupt, sued out a writ of replevin in the state court and got judgment. The receiver brought a writ of error to the U. S. Supreme Court. *Held*, that the judgment be reversed. *Murphy 2d v. Hoffman Co.*, U. S. Sup. Ct., Jan. 4, 1909.

For a discussion of the principles involved, see 21 HARV. L. REV. 433.

GARNISHMENT — EFFECTS OF GARNISHMENT — LIABILITY OF SURETY FOR INTERFERENCE WITH GARNISHEE'S CONTRACT. — A entered into a contract with B by which B agreed to mill and sell A's rice crop. C brought suit against A and garnished B. B stopped milling, believing he had no authority to proceed with the contract. C lost his suit against A. As C was insolvent A sued D, the surety on the garnishment bond, claiming damages for interference with

performance of the contract. *Held*, that he cannot recover. *Moore and Bridgman v. U. S. Fidelity and Guaranty Co.*, 113 S. W. 947 (Tex., Civ. App.).

Garnishment in no way changes the situation of the parties except that the defendant's claim against the garnishee is thereby transferred to the plaintiff. *North Chicago Rolling Mill Co. v. St Louis Ore and Steel Co.*, 152 U. S. 596. A garnishee loses none of those rights of set-off and defense which existed or were actually accruing at the time of the service of attachment and which might have been asserted by him had the defendant himself sought to enforce the claim. *Farmers' and Merchants' Bank v. Franklin Bank*, 31 Md. 404. Nor are his rights enlarged. See *Fifield v. Wood*, 9 Ia. 249. On these principles a factor receiving goods for sale and making advances thereon cannot, by garnishment, be deprived of his right to sell. *White Mountain Bank v. West*, 46 Me. 15. Moreover, the garnishee is entitled to the benefit of any existing contract he may have with the defendant. *Baltimore and Ohio R. R. Co. v. Wheeler*, 18 Md. 372. So, in the principal case, the contract was in no way affected. Recovery on an attachment bond is limited to such damages as are the direct result of the wrongful attachment. *Higgins v. Mansfield*, 62 Ala. 267. But a misconception by the garnishee of the legal consequences of the attachment cannot be considered such a direct result. *Goodbar v. Lindsley*, 51 Ark. 380.

**HABEAS CORPUS — LEGAL EXISTENCE OF COURT ATTACKED IN HABEAS CORPUS PROCEEDINGS.** — The relator, who had been convicted and sentenced to imprisonment, brought a writ of *habeas corpus*, alleging that the court that tried him was not legally created, in that the legislative act on which it was founded had been vetoed by the governor, and not passed by a sufficient majority thereafter. *Held*, that the legal existence of a court organized and created under color of law cannot be inquired into in *habeas corpus* proceedings. *State ex rel. Bales v. Bailey*, 118 N. W. 676 (Minn.).

Unless a court is created by the constitution or by a valid act of the legislature, it has no jurisdiction. *Re Norton*, 64 Kan. 842. And all proceedings before a court without jurisdiction are void. *Ex parte Jones*, 27 Ark. 349. So an imprisonment by such a court is an unlawful detention of the person, for which relief is given by *habeas corpus*. *People v. McLeod*, 1 Hill (N. Y.) 377. But it is believed that when jurisdiction depends on the constitutionality of a statute, the statute should not be tested in such hurried proceedings; though, it is true, this contention does not seem to be universally supported by the authorities. See *Ex parte Snyder*, 64 Mo. 58; *Ex parte Pitts*, 35 Fla. 149. The Minnesota rule, however, as here laid down, is based on the supposedly analogous case of a *de facto* judge, it being settled that his position cannot be attacked collaterally. See *Burt v. Winona & St. Peter R. Co.*, 31 Minn. 472. But the analogy fails; for whereas a *de facto* court has no jurisdiction, the very existence of a *de facto* judge depends on the existence of a *de jure* court, and his acts are binding on third parties and are only reviewable by the state. *Clark v. Commonwealth*, 29 Pa. St. 129. See *Norton v. Shelby County*, 118 U. S. 425.

**INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — COMMISSION'S POWER TO INTERROGATE.** — In the course of an investigation the Interstate Commerce Commission interrogated the defendant with the object of ascertaining whether the directors of a railroad engaged in interstate business had expended its funds while the defendant was an officer of the railroad in buying stocks at inflated prices, or stocks that should not have been purchased. On refusal to answer, suit was instituted to compel him to do so. *Held*, that he need not answer. *Interstate Commerce Commission v. Harriman*, U. S. Sup. Ct., Dec. 14, 1908.

This decision reverses the decision of the lower court, commented upon in 21 HARV. L. REV. 431.

**JUDGMENTS — SATISFACTION — EFFECT OF EXECUTION SALE OF EX-EMPT PROPERTY.** — A judgment creditor levied on and sold property of the